

## **REMARKS**

Agent for Applicant presents original claims 2-4, 6-12 and 14-25, and amended claims 1, 5, 13, 26 and 27 for consideration by the Examiner. The present application has 27 claims in total.

### **Specification**

The Examiner reminds the Applicant of the proper language and format for an abstract of the disclosure.

Agent for the Applicant has amended the abstract of the disclosure to conform to the proper language and format and provides a substitute sheet therefor.

### **Claims Rejections – 35 USC §112**

The Examiner rejects claims 13, 26 and 27 because each element of the claims starts with a capital letter.

Claims 13, 26 and 27 have been amended to overcome this objection.

The Examiner rejects claims 27 as missing the letter “d” and half parenthesis “d)” for the last element of the claim.

Claim 27 has been amended to overcome this objection.

### **Claims Rejections – 35 USC §102**

The Examiner states that claims 1-4, 6-16, and 18-27 are rejected as being anticipated by Pugliese et al (US Patent Application No. 2002/0072974). Agent for Applicant respectfully disagrees for the following reasons.

The present invention is a system, computer product and method aimed at facilitating sales. This is achieved through the Internet and the application of a variety of modules, and is supported by several functionalities, including the choice of sales agent users to keep customer data confidential or to share aspects of this data with other sales agents.

Pugliese discloses a ShopLive system that supports a shopper's shopping experience within a Mall context. Information collected by ShopLive is directed to enhancing the shopping

environment for the shopper through the provision of information and ease of shopping steps. Thus, ShopLive does not extend certain functions to Merchants, such as the ability to determine and apply a mode of dissemination of shopper information. Shoppers may create a wish list, whereby items for sale are identified so that known and widely-available information is collected into a list that can be shared with other shoppers. However, Pugliese does not allow for a Merchant to access shopper information, which may initially be confidential, and to choose to hold the information as confidential or to disseminate this information to other Merchants for the purpose of facilitating sales.

Additionally the *In re Gulack* decision is referenced by the Examiner in the context of these claims rejections. The Gulack decision holds that a functional relationship must exist between elements of printed matter and substrate if both are included in a particular claim. The court in rendering its Gulack decision finds that such a relationship exists based upon the facts of the case at bar.

The Examiner states that the element of contact data is not given patentable weight in the context of claims 1, 13, 26 and 27 in light of *In re Gulack*. We respectfully point out that the decision of the Gulack decision is directed to finding a functional relationship between a substrate and printed matter. Gulack does not purport to stand for any wider principle. This being said, if we consider contact data as equivalent to printed matter, as the Examiner indicates he considers it to be, then we can point to a functional relationship between this element and the method of generating sales of the invention, and other elements of claims 1, 13, 26 and 27, including the database element. The database permits controllable access of the contact data by the sales agents. Moreover, with respect, the "method steps would not be performed the same regardless of the specific data that is collected," as indicated by the Examiner, because the access control of the contact data, allotted by sever application and exercised by the sales agent users, may be affected by differing contact data collected.

With respect to claim 1, it is respectfully submitted that Pugliese does not include the element of allowing "sales agent users to control access to their contact data". For at the least the reasons described above, including the reference to *In re Gulack* and the functional relationship of the contact data to the claim elements, Pugliese does not anticipate claim 1.

With respect to claim 2, this claim depends from claim 1 and is patentable for at least the reasons cited above.

With respect to claim 3, this claim depends from claim 1 and is patentable for at least the reasons cited above.

With respect to claim 4, this claim depends from claim 1 and is patentable for at least the reasons cited above.

With respect to claims 6 and 7, these claims depend (directly and indirectly) from claim 1 and are patentable for at least the reasons cited above.

With respect to claim 8, this claim depends from claim 2 and is patentable for at least the reasons cited above.

With respect to claims 9 and 21, these claims depend from claims 9 and 20 and are patentable for at least the reasons cited herein.

With respect to claim 10, this claim depends from claim 1 and is patentable for at least the reasons cited above.

With respect to claims 11 and 22, these claims depend from claims 2 and 13 and are patentable for at least the reasons cited herein.

With respect to claims 12 and 23, these claims depend from claims 1 and 13 and are patentable for at least the reasons cited herein.

With respect to claim 13, it is respectfully submitted that Pugliese does not include the element of a "database management facility" allowing "sales agent users to restrict access to their contact data". For at least the reasons described above, including the reference to *In re Gulack* and the functional relationship of the contact data to the claim elements, Pugliese does not anticipate claim 13. We further respectfully point out that claim 13 does not include "method steps".

With respect to claim 14, this claim depends from claim 13 and is patentable for at least the reasons cited above.

With respect to claim 15, this claim depends from claim 13 and is patentable for at least the reasons cited above.

With respect to claim 16, this claim depends from claim 13 and is patentable for at least the reasons cited above.

With respect to claim 17, this claim depends from claim 13 and is patentable for at least the reasons cited above.

With respect to claim 18, this claim depends from claim 13 and is patentable for at least the reasons cited above.

With respect to claim 19, this claim depends from claim 18 and is patentable for at least the reasons cited above.

With respect to claim 20, this claim depends from claim 13 and is patentable for at least the reasons cited above.

With respect to claims 24 and 25, these claims depend from claim 13 and are patentable for at least the reasons cited above.

With respect to claims 26 and 27, it is respectfully submitted that Pugliese does not include the element of a "database management facility" allowing "sales agent users to restrict access to their contact data". For at the least the reasons described above, including the reference to *In re Gulack* and the functional relationship of the contact data to the claim elements, Pugliese does not anticipate claims 26 and 27. We further respectfully point out that claims 26 and 27 do not include "method steps".

**Claims Rejection – 35 USC §103(a)**

The Examiner rejects claims 5 and 17 as unpatentable over Pugliese in view of official notice.

With respect to claim 5, it depends from claim 1 and for at least the reasons cited above is not obvious in light of Pugliese in view of official notice.


With respect to claim 17, it depends from claim 13 and for at least the reasons cited above is not obvious in light of Pugliese in view of official notice.

**CONCLUSIONS:**

In view of the foregoing amendments and remarks, the application is believed to be in condition for allowance and a notice to that effect is respectfully requested.

Should the Examiner not find the application to be in allowable condition or believe that a conference call would be of value in expediting the prosecution of the application, Applicant requests that the Examiner telephone the undersigned Counsel to discuss the case.

Yours faithfully,

 per Eugene Gierczak

Agent for Applicant  
Eugene J.A. Gierczak  
(Registration No. 31,690)  
**MILLER THOMSON LLP**  
Barristers & Solicitors  
Scotia Plaza, P.O. Box 1011  
40 King Street West, Suite 5800  
Toronto, Ontario Canada M5H 3S1  
Telephone No. 416.596.2132  
Telecopier No. 416.595.8695  
EJAG/kdd

Encl

cc: Gabrielle Jeans

2206127.1